

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In the Matter of the Application of NATIONAL :	
UNION FIRE INSURANCE COMPANY OF :	
PITTSBURGH, PA, on behalf of itself and each :	
of the related insurers that provided coverage to :	07 CV 3355 (LTS)
respondent, :	
	:
Petitioner, :	
	:
For an Order Appointing an Arbitrator in an :	<b>DECLARATION OF SCOTT R.</b>
Arbitration Proceeding :	<b>EMERY IN OPPOSITION TO</b>
	:
-against- :	<b>PETITIONER'S APPLICATION</b>
	:
	<b>FOR THE APPOINTMENT OF A</b>
	<b><u>PARTY-ABRITRATOR</u></b>
	:
CRUM STAFFING, INC., CRUM STAFFING :	
II, INC., CRUM RESOURCES, INC., AND :	
CRUM RESOURCES II, INC., D/B/A/ CRUM :	
SERVICES, INC., :	
	:
Respondents. :	
-----X	

SCOTT R. EMERY, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am an attorney admitted to practice before this Court and am a member of Lynch Daskal Emery LLP, attorneys for Respondents Crum Staffing, Inc., Crum Staffing II, Inc., Crum Resources, Inc., and Crum Resources II, Inc., d/b/a/ Crum Services, Inc. (together, "Crum"). I respectfully submit this declaration in opposition to Petitioner's application for the appointment of a party-arbitrator for Crum.

2. Attached as Exhibit A is a copy of Search for Arbitrators web pages from <http://www.arias-us.org>.

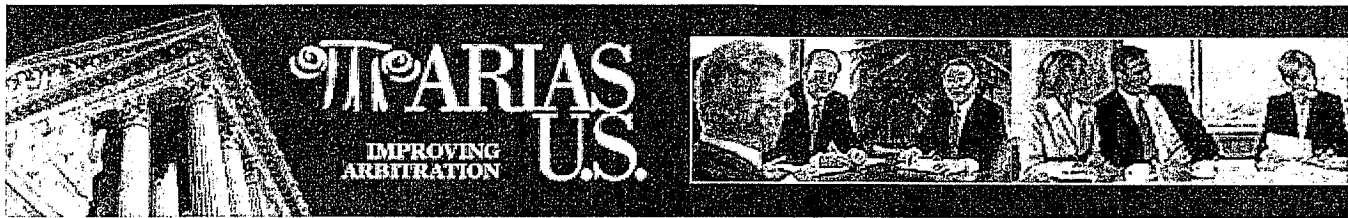
3. Attached as Exhibit B is a copy of *National Union Fire Ins. Co. of Pittsburgh, PA v. Holt Cargo Systems, Inc.*, No. 99 Civ. 3699, 2000 WL328802 (S.D.N.Y. March 28, 2000).

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
May 9, 2007

  
SCOTT R. EMERY



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## Search for Arbitrators

The ARIAS arbitrator search system allows you to search among our 321 Certified Arbitrators based on their location, name, current company and/or past experience.

Location and name fields are optional. To search by location, select a state or country first.

To search by experience, check the boxes that specify the background or experience area. The resulting list will provide the names of arbitrators who meet ALL of the criteria.

If the list has too many or too few names, go back and adjust the specifications to broaden the scope.

State/Country	City	<input type="button" value="RUN"/>
United States	Any	
First Name*	Last Name*	Current Employer*
<input type="text"/>	<input type="text"/>	<input type="text"/>

### Insurance Company Officer

- ☐ Active  
☒ Former/Retired

### ☐ ARIAS-U.S. Umpire List

### Mediation Experience

- ☐ As Mediator
 ☐ As Counsel

### Reinsurance Company Officer

- ☐ Active  
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### Other Professional Background

- ☐ Attorney
 ☐ Claims Department  
☐ Actuary
 ☐ Legal Department  
☐ Underwriter
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☐ Broker/Intermediary

### Lloyds

- ☐ Active  
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### Experience Keywords

Blue = Insurance Gray =

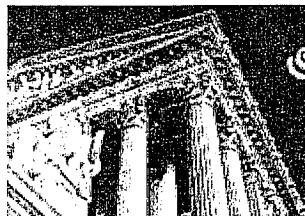
- |  |  |
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| <input type="checkbox"/> Accident & Health                           | <input type="checkbox"/> Financial Guarantee           |
| <input type="checkbox"/> Agricultural                                | <input type="checkbox"/> Intellectual Property         |
| <input type="checkbox"/> Alternative Risk/Finite Risk/Self Insurance | <input type="checkbox"/> Libel/Slander/Media Liability |
| <input type="checkbox"/> Antitrust                                   | <input type="checkbox"/> Life                          |
| <input type="checkbox"/> Architects & Engineers                      | <input type="checkbox"/> Mergers & Acquisitions        |
| <input type="checkbox"/> Asbestos                                    | <input type="checkbox"/> MGA/MGU                       |
| <input type="checkbox"/> Audit                                       | <input type="checkbox"/> Ocean Marine                  |
| <input type="checkbox"/> Automobile Liability/Property               | <input type="checkbox"/> Personal Lines                |
| <input type="checkbox"/> Aviation                                    | <input type="checkbox"/> Political Risk                |
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| <input type="checkbox"/> <input type="checkbox"/> Commercial Liability           | <input type="checkbox"/> <input type="checkbox"/> Product/Consumer Warranties               |
| <input type="checkbox"/> <input type="checkbox"/> Commercial Property            | <input type="checkbox"/> <input type="checkbox"/> Product Liability                         |
| <input type="checkbox"/> <input type="checkbox"/> Commutations                   | <input type="checkbox"/> <input type="checkbox"/> Professional Liability/Errors & Omissions |
| <input type="checkbox"/> <input type="checkbox"/> Construction Defects           | <input type="checkbox"/> <input type="checkbox"/> Receivership                              |
| <input type="checkbox"/> <input type="checkbox"/> Contract Wording               | <input type="checkbox"/> <input type="checkbox"/> Regulatory/Licensing                      |
| <input type="checkbox"/> <input type="checkbox"/> Directors & Officers           | <input type="checkbox"/> <input type="checkbox"/> Retrospective Rating                      |
| <input type="checkbox"/> <input type="checkbox"/> Disability                     | <input type="checkbox"/> <input type="checkbox"/> Technology                                |
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| <input type="checkbox"/> <input type="checkbox"/> Environmental/Pollution        | <input type="checkbox"/> <input type="checkbox"/> Toxic Torts                               |
| <input type="checkbox"/> <input type="checkbox"/> Excess/Surplus Lines           | <input type="checkbox"/> <input type="checkbox"/> Treaty                                    |
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| <input type="checkbox"/> <input type="checkbox"/> Fidelity & Surety              |   |

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Name	Location	Employer
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Hugh Alexander	Denver, CO	Alexander Law Firm, P
David V. Axene	Murrieta, CA	Axene Health Partners
Christine E. Bancheri	Wenham, MA	Self-employed
Nasri H. Barakat	New York, NY	II&RCS, Inc., (Interna
Linda Martin Barber	Lawrenceville, NJ	Navigant Consulting, I
Clive A. R. Becker-Jones	Bedford, NH	Gleneagle Managemer
Peter H. Bickford	New York, NY	Self-employed
Katherine Lee Billingham	Indianapolis, IN	Katherine L. Billingham
John H. Binning	Lincoln, NE	Rembolt Ludtke LLP
William K. Borland	Chicago, IL	Self-employed
Donald S. Breakstone	Rolling Meadows, IL	Lemme Insurance Gro
David S. Brodnan	Barrington, IL	Swiss Re
Janet J. Burak	Cedar Grove, NJ	Self-employed
Frank T. Buziak	Chatham, NJ	Buziak Consulting
Cecil D. Bykerk	Omaha, NE	CDBykerk Consulting,
James I. Cameron	Toronto, Canada	Cameron & Associates
David L. Cargile	Beaufort, SC	Cargile Consulting Inc
Bruce A. Carlson	Brooklyn Park, MN	CP Consulting Services
R. Michael Cass	Chicago, IL	R.M. Cass Associates
Susan S. Claflin	Cheshire, CT	Self-employed
Dewey P. Clark	Lawrenceville, NJ	Self-employed - Insur
Peter C. Clemente	New York, NY	Clemente Consulting S
Martin B. Cohen	Swampscott, MA	Martin B. Cohen Const
John D. Cole	Washington, DC	Wiley Rein LLP
Robert L. Comeau	Arroyo Grande, CA	Comeau Arbitration Se
William P. Condon	Harwich Port, MA	Association Services o
Charles F. Cook	Mountain Lakes, NJ	MBA Actuaries, Inc.
James P. Corcoran	New York, NY	James P. Corcoran
John W. Cowley	New Orleans, LA	Cowley & Associates
Peter L. Craft	Fairfield, CT	D.W. Van Dyke and Co
Dale C. Crawford	Littleton, CO	Self Employed Consult
Patrick B. Cummings	Philadelphia, PA	Resolute Management
Cathryn A. Curia	Pompton Plains, NJ	Self-employed
Thomas M. Daly	Newtown, CT	Reconnaissance World

<b>Michael S. Davis</b>	New York, NY	Zeichner Ellman & Kra
<b>Howard D. Denbin</b>	Philadelphia, PA	Legion Insurance Com
<b>Joseph J. DeVito</b>	New York, NY	Navigant Consulting, I
<b>John S. Diaconis</b>	New York, NY	Rutherford & Christie,
<b>Theodor Dielmann</b>	30175 Hannover,	Th. Dielmann GmbH
<b>Brian J. Donnelly</b>	Westlake Village, CA	Brian J. Donnelly, Atto
<b>Andrew Ian Douglass</b>	Boston, MA	Morrison Mahoney LLP
<b>John H. Drew</b>	Princeton, NJ	J. Drew Insurance Clai
<b>Charles S. Ernst</b>	New York, NY	XL America
<b>Robert J. Federman</b>	San Luis Obispo, CA	Robert J. Federman At
<b>Paul Feldsher</b>	Huntington, CT	Rossfield Advisors, LLC
<b>Paul R. Fleischacker</b>	West Palm Beach, FL	Self-employed Consult
<b>Charles M. Foss</b>	Orleans, MA	Self-employed
<b>Caleb L. Fowler</b>	Westover, MD	Self-employed
<b>William W. Fox Jr.</b>	Philadelphia, PA	Self-employed
<b>James (Jay) H. Frank</b>	Santa Barbara, CA	PRORESOLV Counsel,
<b>Richard C. Franklin</b>	Glenmoore, PA	Self-employed
<b>Steven A. Gaines</b>	Seattle, WA	GainesADR LLC
<b>James P. Galasso</b>	Atlanta, GA	Actuarial Modeling
<b>Ronald S. Gass</b>	Weston, CT	The Gass Company, Ir
<b>Peter A. Gentile</b>	New Canaan, CT	Self-employed
<b>Colin L. Gray</b>	Elmhurst, IL	Gray Wolf Group, Inc.
<b>Robert B. Green</b>	Simsbury, CT	Self-employed
<b>Thomas A. Greene</b>	Jupiter, FL	Self-employed
<b>Hugh W. Greene Jr.</b>	Maineville, OH	ICARMS
<b>George F. Grode</b>	Camp Hill, PA	Self-employed Manage
<b>Susan E. Grondine</b>	Cambridge, MA	Cavell America, a men
<b>Martin D. Haber</b>	New York, NY	Law Office of Martin H
<b>Franklin D. Haftl</b>	Sarasota, FL	Reinsurance Consultin
<b>William D. Hager</b>	Boca Raton, FL	Insurance Metrics Corp
<b>Robert M. Hall</b>	Rockport, ME	Self-employed
<b>Robert F. Hall</b>	Bluffton, SC	Robert F. Hall & Co.
<b>Lawrence F. Harr</b>	Omaha, NE	Lamson, Dugan & Mur
<b>George E. Hartz III</b>	Scottsdale, AZ	Hartz Reinsurance Ltd
<b>Stanley Hassan</b>	Orange, CA	Law Office of Stan Has
		Insurance Arbitration.
<b>William G. (Sandy) Hauserman</b>	New York, NY	Guy Carpenter & Co.,
<b>Charles W. Havens III</b>	Washington, DC	Self-employed
<b>Paul D. Hawksworth</b>	Parrish, FL	Self-employed
<b>Alan R. Hayes</b>	Germantown, NY	Self Employed - 1998
<b>James S. Hazard</b>	Staten Island, NY	Self-employed 1996-P
<b>John Heath</b>	Sarasota, FL	John Heath & Co., Inc
<b>Robert D. Holland</b>	West Hartford, CT	RMG Consulting
<b>William H. Huff III</b>	Dallas, TX	Thompson, Coe, Cousi
<b>Robert M. Huggins</b>	Basking Ridge, NJ	Self-employed
<b>Fritz K. Huszagh</b>	Chicago, IL	Hinshaw & Culbertson



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<b>Ronald A. Jacks</b>	Whangerai, New Zealand	Self-employed
<b>Robert S. James</b>	Dallas, TX,	Markman Group
<b>Bonnie B. Jones</b>	Villanova, PA	Self-employed
<b>Leo J. Jordan</b>	West Orange, NJ	Self-employed
<b>Lydia B. Kam Lyew</b>	Stamford, CT	REnamics LLC
<b>Jerome Karter</b>	East Orleans, MA	Self-employed as Sage
<b>James Ignatius Keenan Jr.</b>	Baltimore, MD	Self-employed
<b>T. Richard Kennedy</b>	Fishers Island, NY	Self-employed as Arbit
<b>Bernard A. Kesselman</b>	West Hempstead, NY	Self-employed
<b>James K. Killelea</b>	New York, NY	Reinsurance Solutions
<b>William M. Kinney</b>	Eatontown, NJ	William M. Kinney, Esc
<b>Patricia M. Kirschling</b>	Middletown, NJ	NationsBuilders Insura
<b>Joel D. Klaassen</b>	Weston, CT	Centre Partners LLC
<b>Floyd H. Knowlton</b>	Rogersville, TN	Self-employed
<b>Linda H. Lamel</b>	New York, NY	Self-employed
<b>Soren N. S. Laursen</b>	Morristown, NJ	Crum & Forster
<b>Y. John Lee</b>	Greenville, SC	Hewitt Coleman and A
<b>Denis W. Loring</b>	Palm Beach Gardens, FL	RGA Reinsurance Com
<b>Douglas R. Maag</b>	Malvern, PA	Douglas R. Maag, LLC
<b>W. James MacGinnitie</b>	Atlanta, GA	Self Employed Consult
<b>Robert M. Mangino</b>	Convent Station, NJ	Self-employed Reinsur
<b>Richard E. Marrs</b>	Finksburg, MD	Self-employed
<b>Fred G. Marziano</b>	Belmar, NJ	Insurance Perspective:
<b>Roderick (Rod) B. Mathews</b>	Richmond, VA	Troutman Sanders, LL
<b>Timothy T. McCaffrey</b>	West Redding, CT	Self-employed
<b>Paul J. McGee</b>	Norwood, MA	Buxbaum, Loggia & As
<b>Thomas J. McGeough</b>	Staten Island, NY	Private Practice
<b>Edwin M. Millette</b>	New Canaan, CT	Riley, Harper & Sons,
<b>Christian M. Milton</b>	Wynnewood, PA	Retired
<b>Roger M. Moak</b>	New York, NY	Self-employed
<b>Francis A. (Frank) Montemarano</b>	Punta Gorda, FL	Self-employed Consult
<b>Rodney D. Moore</b>	South Padre Island, TX	Self-employed
<b>Jeffrey L. Morris</b>	Simsbury, CT	Self-employed
<b>Gerald F. Murray</b>	Oak Park, IL	Self-employed Legal a
<b>William J. Murray</b>	Annandale, NJ	Self Employed
<b>Raymond M. Neff</b>	Sarasota, FL	Neff and Associates -
<b>Diane M. Nergaard</b>	Stamford, CT	Eriksen Enterprises, LI
<b>Barbara Niehus</b>	Skokie, IL	Niehus Actuarial Servi
<b>Robert J. O'Hare Jr.</b>	Weston, MA	Self-employed Attorne
<b>Constance D. O'Mara</b>	Medford, NJ	O'Mara Consulting, LL
<b>Elliot S. Orol</b>	Rye Brook, NY	The Navigators Group,
<b>Herbert Palmberger</b>	50672 Köln, Germany	DLA Piper Rudnick Gr
<b>Michael R. Pinter</b>	McHenry, IL	Self-employed
<b>James J. Powers</b>	Mahwah, NJ	Self-employed
<b>Raymond L. Prosser</b>	Charlotte, NC	Transamerica Reinsur

<b>Robert C. Quigley</b>	Hatboro, PA	Quigley & Associates
<b>Frank E. Raab</b>	Beverly Hills, CA	Self-employed
<b>R. Stephen Radcliffe</b>	Indianapolis, IN	Radcliffe Consulting
<b>Peter F. Reid</b>	Doylestown, PA	Self-employed
<b>George M. Reider Jr.</b>	Farmington, CT	George Reider Consult
<b>Robert C. Reinarz</b>	Sisterdale, TX	Self-employed
<b>David R. Robb</b>	Avon, CT	RobbRe, LLC
<b>Robert L. Robinson</b>	Wynnewood, PA	Self-employed
<b>Edmond F. Rondepierre</b>	Darien, CT	Self-employed
<b>Brenda L. Ross-Mathes</b>	Columbus, OH	Grandview Re/Insuran
<b>Andrew N. Rothseid</b>	Philadelphia, PA	PricewaterhouseCoope
<b>Don A. Salyer</b>	Naples, FL	Self-employed
<b>Peter A. Scarpato</b>	Yardley, PA	Conflict Resolved, LLC
<b>Daniel E. Schmidt IV</b>	Little Silver, NJ	Self-employed - Dispu
<b>Jack R. Scott</b>	Philadelphia, PA	ACE International Life
<b>Savannah Sellman</b>	San Francisco, CA	Duane Morris LLP
<b>Richard M. Shaw</b>	Philadelphia, PA	Towers Perrin
<b>Radley D. Sheldrick</b>	Westborough, MA	Reinsurance Diversifie
<b>Richard E. Smith</b>	Westport, CT	NorthPort Advisors, In
<b>Timothy W. Stalker</b>	Blue Bell, PA	Nelson, Levine, de Luc
<b>J. Gilbert Stallings</b>	Hackensack, NJ	Retired
<b>Paul N. Steinlage</b>	Wausau, WI	Paul N. Steinlage, LLC
<b>Elizabeth M. Thompson</b>	Avon, CO	Self-employed
<b>Paul C. Thomson III</b>	Halesite, NY	Reassess, Inc.
<b>John J. Tickner</b>	Bell Canyon, CA	Self Employed
<b>Kevin J. Tierney</b>	Falmouth, ME	Self-employed
<b>Harry Tipper III</b>	Hamilton, Bermuda	Lyon's Gate Reinsuran
<b>David W. Tritton</b>	Philadelphia, PA	Benfield Group
<b>Jacobus J. Van de Graaf</b>	Johns Island, SC	Self-employed
<b>Theodore A. Verspyck</b>	Wilton, CT	Self-employed
<b>William J. Wall</b>	Newtown, PA	Private Practice, Sole I
<b>Jeremy R. Wallis</b>	Basking Ridge, NJ	Self-employed Consult
<b>Andrew S. Walsh</b>	Berwyn, PA	Self-employed
<b>Paul Walther</b>	Lake Mary, FL	Reinsurance Direction:
<b>Richard G. Waterman</b>	Minneapolis, MN	Northwest Reinsuranc
<b>W. Mark Wigmore</b>	Simsbury, CT	Avalon Consulting, LLC
<b>Michael S. Wilder</b>	West Hartford, CT	Self-employed
<b>Eugene T. Wilkinson</b>	Warren, NJ	The Wilkinson Group,
<b>William A. Wilson</b>	Kingwood, TX	Wilson Advocacy and (
<b>W. Rodney Windham</b>	Tuscaloosa, AL	Alabama Reassurance
<b>Ronald L. Wobbeking</b>	Savage, MN	Self-employed
<b>Allan M. Zarcone</b>	New York, NY	GLOBAL Reinsurance (
<b>George G. Zimmerman</b>	Sarasota, FL	George G. Zimmerma

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Page 1

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National Union Fire Ins. Co. of Pittsburgh, Pa. v.  
 Holt Cargo Systems, Inc.  
 S.D.N.Y., 2000.

Only the Westlaw citation is currently available.

United States District Court, S.D. New York.  
 NATIONAL UNION FIRE INSURANCE  
 COMPANY OF PITTSBURGH, PA, Petitioner,  
 v.  
 HOLT CARGO SYSTEMS, INC., Respondent.  
 No. 99 Civ. 3699(RCC).

March 28, 2000.

#### Opinion and Order

CASEY, J.

\*1 Petitioner National Union Fire Insurance Company of Pittsburgh, PA (hereinafter "National Union") filed a Petition to Appoint an Arbitrator and an Umpire in connection with a series of demands for arbitration which it had served on respondent Holt Cargo Systems, Inc. (hereinafter "Holt"). National Union has provided Holt with insurance coverage for a number of years through a series of Indemnity Agreements (hereinafter the "Agreements"). Under the Agreements, the parties agreed to arbitrate all disputes or differences arising out of the interpretation of the Agreements. National Union objects to Holt's selection of a particular arbitrator on the grounds that the arbitrator is biased against National Union. Failing to agree on the selection of Holt's arbitrator, National Union also objects to the candidates for umpire suggested by Holt's arbitrator. National Union alleges that Holt's arbitrator did not act in good faith in selecting the candidates for umpire. National Union now requests that the Court select both an arbitrator and an umpire. National Union's petition is denied without prejudice with leave to reapply.

#### I. BACKGROUND

National Union is a Pennsylvania corporation with its principal place of business in the Southern District of New York. Holt is a Delaware corporation with its principal place of business in New Jersey. National Union has provided insurance coverage for Holt for a number of years, pursuant to the Agreements. This coverage includes, *inter alia*, worker's compensation,

longshoreman's and harbor workers' insurance and other employer's liability insurance.

The Agreements each contain an arbitration clause stating that:

[a]ll disputes or differences arising out of the interpretation of this Agreement shall be submitted to the decision of two (2) Arbitrators, one to be chosen by each party, and in the event the Arbitrators fail to agree to the decision of an Umpire to be chosen by the Arbitrators. The Arbitrators and Umpire shall be executive officials of Fire or Casualty Insurance or Reinsurance Companies other than the company or its affiliates; or an individual list in A.M. Best's *Recommended Insurance Attorneys* (latest available edition) or any individual recognized as an authority in insurance matters, such recognition evidenced by receipt of a Charter Property and Casualty Underwriter's Certificate. If the Arbitrators fail to appoint an Umpire, within one (1) month of a request in writing by either of them to do so, such Arbitrator or Umpire, as the case may be, shall at the request of either party be appointed by a justice of the supreme [sic] Court of the State of New York.

Petition to Appoint at pp. 3-4, ¶ 9. Although the arbitration clauses for some of the Agreements vary to a degree, it is undisputed that the Agreements all provide for disputes to be resolved by the two (2) arbitrators and one (1) umpire system described herein. One of the primary differences between the Agreements is the language outlining the qualifications of the arbitrator.

\*2 On or about January 8, 1999, National Union served eight Demands for Arbitration on Holt, relating to the Agreements covering the policy years February 1, 1988 to February 1, 1989 through March 9, 1994 to March 9, 1995. Petition to Appoint at p. 2, ¶ 7. On February 19, 1999, Holt appointed Robert L. Russell of Ernst & Young as its arbitrator. On March 1, 1999, National Union appointed Donald T. DeCarlo as its arbitrator. Shortly thereafter, National Union sought to challenge the appointment of Russell as Holt's arbitrator, based on alleged bias. In another arbitration on May 6, 1999 (the "May 6 Arbitration"), Russell had testified as an expert witness concerning National Union's conduct of its business. National Union claims that Russell's testimony at the May 6 Arbitration is "inconsistent with having an open mind in the present arbitration," and therefore, Russell

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 Not Reported in F.Supp.2d, 2000 WL 328802 (S.D.N.Y.)  
 (Cite as: Not Reported in F.Supp.2d)

Page 2

should be removed as Holt's appointed arbitrator. Petition to Appoint at p. 5, ¶ 15. National Union subsequently has agreed to reserve its objections to Russell and, if the parties determine that Russell is qualified as an arbitrator under any one of the Agreements, to conduct the arbitrations under a consolidated proceeding.

DeCarlo sent Russell a letter on April 2, 1999 requesting that an umpire be appointed, and Russell nominated two individuals. National Union alleges that neither of the candidates is qualified under the Agreements, but specifically challenges only one of Russell's candidates. National Union claims that Russell has failed to act in good faith because the individual nominated is a named partner of the law firm that served as co-counsel to the party opposing National Union at the May 6 Arbitration. The candidate is not alleged to have been a part of the team of lawyers that worked with Russell at the May 6 Arbitration. However, National Union contends that Russell and the candidate have some connection such that Russell's nomination of this individual indicates bad faith on the part of Russell.

National Union now petitions the Court to appoint an arbitrator and an umpire, given Russell's alleged bias against National Union and his corresponding bad faith in nominating another allegedly biased individual to serve as umpire.

## II. DISCUSSION

National Union's request to have an arbitrator appointed belies its desire to remove Russell as Holt's appointed arbitrator. Despite the fact that National Union agreed to reserve its objections concerning Russell's alleged partiality, National Union undauntedly proceeds to argue for his removal. The Court, however, will not consider National Union's end run around the established case law in this Circuit. Although the Federal Arbitration Act (hereinafter the "FAA") empowers the Court to vacate an award "[w]here there was evident partiality or corruption in the arbitrators" (9 U.S.C. § 10(a)(2) (1999)), the FAA does not provide for removal of an arbitrator prior to the rendering of an award.<sup>FN1</sup> See Aviall, Inc. v. Ryder Systems, Inc., 110 F.3d 892, 895 (2d Cir.1997). In fact, the Court "cannot entertain an attack upon the qualifications or partiality of arbitrators until after the conclusion of the arbitration

and the rendition of an award." Aviall, 110 F.3d at 895 (quoting Michaels v. Mariforum Shipping, S.A., 624 F.2d 411, 414, n. 4 (2d Cir.1980)); Alter v. Englander, 901 F.Supp. 151, 153 (S.D.N.Y.1995).

FN1. Although there have been instances where courts have removed arbitrators prior to arbitration on account of partiality, these cases are inapposite because the removal was due to the invalidity of an arbitration agreement based on contract principles. See Erving v. Virginia Squires Basketball Club, 349 F.Supp. 716 (E.D.N.Y.), *aff'd*, 468 F.2d 1064 (2d Cir.1972); Masthead Mac Drilling Corp. v. Fleck, 549 F.Supp. 854 (S.D.N.Y.1982); Cristina Blouse Corp. v. International Ladies Garment Workers' Union, Local 162, 492 F.Supp. 508 (S.D.N.Y.1980).

\*3 Moreover, National Union overlooks the fact that "parties agree to arbitrate precisely because they prefer a tribunal with expertise regarding the particular subject matter of their dispute .... [and] [f]amiliarity with a discipline often comes at the expense of complete impartiality." Morelite Constr. Corp. v. New York City Dist. Council Carpenters Benefit Funds, 748 F.2d 79, 83 (2d Cir.1984) (citations omitted). Therefore, disqualifying an arbitrator because he or she had prior professional dealings with one of the parties would make it difficult at best, to find a qualified arbitrator at all. See *id.*; see also International Produce, Inc. v. A/S Rosshavet, 638 F.2d 548, 552 (2d Cir.1981) (arbitrators are chosen because of experience in particular community, therefore some overlapping representation and interest inevitably results).

In light of the time that has passed since the dispute regarding Holt's appointment of Russell as an arbitrator arose, the Court directs the parties to resolve this matter expeditiously.<sup>FN2</sup> The parties have 30 days from the date of this opinion to report to the Court either that Russell has accepted his appointment or that a new arbitrator has been appointed. Given the nearly 15 months that have passed since National Union first served its Demands for Arbitration on Holt, the Court will view a failure to appoint an arbitrator in the additional 30 day period as a lapse in the naming of an arbitrator, pursuant to section 5 of the FAA. See 9 U.S.C. § 5

Westlaw.

Not Reported in F.Supp.2d

Page 3

Not Reported in F.Supp.2d, 2000 WL 328802 (S.D.N.Y.)

(Cite as: Not Reported in F.Supp.2d)

(1999); Astra Footwear Indus. v. Harwyn Int'l, Inc., 442 F.Supp. 907, 910 (S.D.N.Y.), *aff'd*, 578 F.2d 1366 (2d Cir.1978); In the Matter of Arbitration Between Cravens, Dargan & Co., Pacific Coast v. General Ins. Co. of Trieste and Venice, 1996 WL 41825 at \*2 (S.D.N.Y. Feb. 2, 1996).

FN2. As of the date of this opinion, the parties have not informed the Court whether Russell has accepted or declined the appointment as an arbitrator.

With regard to the appointment of an umpire, the parties are to select an umpire in accordance with the Agreements, within one week of the appointment of an arbitrator by Holt.

### III. CONCLUSION

For the aforementioned reasons, the petition to appoint an arbitrator and an umpire is denied without prejudice with leave to reapply.

S.D.N.Y.,2000.

National Union Fire Ins. Co. of Pittsburgh, Pa. v. Holt Cargo Systems, Inc.

Not Reported in F.Supp.2d, 2000 WL 328802 (S.D.N.Y.)

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